



INTERIOR BOARD OF INDIAN APPEALS

Edmond H. Burns and Mark Hammons v. Anadarko Area Director,
Bureau of Indian Affairs

11 IBIA 133 (03/22/1983)

Denying reconsideration of:
11 IBIA 40



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

EDMOND H. BURNS and MARK HAMMONS
v.
ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 79-34-A (Reconsideration)

Decided March 22, 1983

Petition for reconsideration of Edmond H. Burns and Mark Hammons v. Anadarko Area Director, Bureau of Indian Affairs, 11 IBIA 40 (1983).

Reconsideration denied.

1. Rules of Practice: Appeals: Reconsideration

The Board will not consider an issue in a petition for reconsideration which was not timely raised and considered below.

2. Attorney's Fees: Generally--Indians: Fiscal and Financial Affairs

The Board of Indian Appeals is without jurisdiction to grant a request for attorney's fees that is not supported by a properly approved contract or statutory basis therefor.

APPEARANCES: Mark Hammons, Esq., pro se. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On February 4, 1983, the Board of Indian Appeals received a petition for reconsideration of its January 14, 1983, decision in Edmond H. Burns and Mark Hammons v. Anadarko Area Director, Bureau of Indian Affairs, 11 IBIA 40 (1983). The decision dismissed the appeal on the grounds that it was moot. The petition, filed by Mark Hammons (petitioner), alleges one issue remained in the appeal, i.e., a claim for compensation in the amount of \$15,000 for legal services allegedly rendered to the Cheyenne-Arapaho Tribes (tribes) during the period from March 26 through November 10, 1979. For the reasons discussed below, the Board denies reconsideration.

The complete factual background of this case is set forth in 11 IBIA 40. Those facts necessary to an understanding of this petition are that on May 24, 1979, the Anadarko Area Director, Bureau of Indian Affairs (BIA), disapproved an attorney contract between petitioner and the tribes. The BIA's

disapproval was based in part on the finding that the tribal council had itself passed a resolution disapproving the contract. Subsequently, on November 10, 1979, the tribal council passed a third resolution providing for a new attorney contract with petitioner.

Petitioner allegedly performed legal services for the tribes during a period in which he had no approved attorney contract. It is for these services that he seeks compensation.

The record on appeal is totally devoid of any indication that petitioner raised this issue to the Bureau of Indian Affairs. Petitioner states that the Administrative Law Judge to whom the Board had referred the appeal was aware that he was seeking this compensation. A statement from the Administrative Law Judge to that effect is attached to the petition. This statement is termed an affidavit, but is not notarized. No reference to compensation appears in the transcript or the Administrative Law Judge's recommended decision of November 19, 1982. Although advised of his right to do so, petitioner filed no exceptions to the recommended decision and filed no brief with the Board raising this issue.

[1, 2] Under the above circumstances, the petition for reconsideration is denied on the basis that the Board will not consider an issue which has not been timely raised and considered below. Were the issue properly before us for a decision on the merits, the Board would still deny the relief requested by petitioner. The Board is without authority to grant a request for attorney's fees which is not supported by a properly approved contract or statutory basis therefor. See Mobley v. Commissioner of Indian Affairs and Jicarilla Apache Tribe, 4 IBIA 1, 82 I. D. 119 (1975). ^{1/}

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is denied.

//original signed
Franklin D. Arness
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge

^{1/} This case does not consider the award of attorney's fees in Indian probate proceedings.